

CHAPTER 25 - STREETS AND HIGHWAYS

Section 25-101. PUBLIC EASEMENTS AND RIGHT-OF-WAY PROTECTED. It is unlawful for any person:

- a. to plow into or gouge with any tool or instrument or mar or deface in any manner any of the public streets, alleys, or highways within the City of Brooklyn Center.
- b. to drive or cause to be driven any vehicle in a manner which destroys or damages curbs, gutters, boulevards, or any plants or improvements located on the public right-of-way. Owners or occupants of land, and builders or contractors thereon, who authorized any vehicle to enter such land in a manner which causes any of the damage or destruction aforesaid shall also be deemed in violation hereof. Persons in violation hereof shall repair or replace such damage to the original condition as approved by the City Engineer, or at the election of the City, such damage or destruction may be repaired or replaced by the City, and such person or persons responsible therefor shall promptly pay to the City the cost thereof. The foregoing liability shall be in addition to the penalties prescribed herein.
- c. to alter the grade of any drainage easement unless a permit shall first be secured therefor from the City, or to obstruct such drainage easement, and each day such obstruction or unauthorized alteration continues shall be deemed a separate offense.

Section 25-102. VIOLATIONS AND PENALTIES. Any person violating this ordinance shall be guilty of a misdemeanor and shall, upon conviction thereof, be punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment not to exceed ninety (90) days or both, together with the costs of prosecution.

DUST TREATMENT

Section 25-201. COUNCIL MAY ORDER. The City Council may order light street oiling or other dust treatment of the City streets and alleys by resolution setting forth the streets and alleys to be treated, the treatment to be applied to the streets or alleys, and specifying that such work shall be done either by day labor or by contract.

Section 25-202. RECORD OF COST. The City Clerk shall keep a record of the cost and the portion of the cost property attributable to each lot and parcel of property abutting on the street or alley on which the work is done.

Section 25-203. COLLECTION OF COST. The charge to each abutting lot or parcel of land resulting from such treatment shall be spread against said lot or parcel of land as a special assessment under Minnesota Statutes, Section 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.

WEIGHT LIMITS ON STREETS AND HIGHWAYS

Section 25-301. CERTAIN DRIVING RESTRICTED - POSTED ROADS. No person shall drive, propel, or draw, or cause to be driven, propelled or drawn, any vehicle of any kind rated in excess of five tons gross for the purpose of carrying or transporting any goods, wares, merchandise, building materials, manure, dirt, rock, stone, sand, gravel, or any other material or materials of any kind whatsoever upon or along any of the public streets and avenues in the City of Brooklyn Center whenever said streets or highways are designated and posted in the following manner:

- a. The City Council may, by resolution duly passed, designate that the above restrictions shall apply to any street or highway whenever it shall find that such restriction is necessary to the health, welfare or safety of inhabitants residing near such street or highway or is otherwise necessary to prevent injury to the street or highway itself, and
- b. Said street or highway is duly posted by clearly visible and appropriate signs which will effectively inform drivers of vehicles that such restriction exists upon said streets or highway.

Section 25-302. EXCEPTIONS. This ordinance shall not apply to vehicles crossing said streets or avenues or traveling along said streets or avenues for the purpose of transporting materials to or from any lot or premises, adjacent thereto; provided, that said vehicle shall enter upon said street or avenue at the intersection nearest to the premises and shall similarly leave said street or avenue.

Section 25-303. ENFORCEMENT. In enforcing this ordinance any vehicle traveling along a restricted street or highway may be required to proceed directly to the nearest weighing station to be weighed if reasonably necessary to determine whether such vehicle is in violation of this ordinance.

Section 25-304. VIOLATION AND PENALTY. Any person violating any of the provisions of this ordinance shall, upon conviction thereof, be punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment not to exceed ninety (90) days or both, together with the costs of prosecution.

STREET NAME CHANGES

Section 25-401. SOUTH ERICON DRIVE - OLIVER AVENUE NORTH. South Ericon Drive, also known as Ericon Court, (lying between the north line of Lot 25, Auditor's Subdivision 218 and Ericon Drive) is hereby renamed, and shall hereafter be known as Oliver Avenue North.

Section 25-402. LAKE PLACE - LAKE SIDE PLACE. Lake Place (lying between 52nd Avenue North and East Twin Lake Boulevard) is hereby renamed and shall hereafter be known as Lake Side Place.

Section 25-403. 59TH AVENUE NORTH - 59-1/2 AVENUE NORTH. 59TH Avenue North (lying between Halifax Avenue North and June Avenue North in Pearson's Northport 3rd Addition) is hereby renamed and shall hereafter be known as 59-1/2 Avenue North.

Section 25-404. LANE STREET - 70TH AVENUE NORTH. Lane Street (lying within the City of Brooklyn Center) is hereby renamed, and shall hereafter be known as 70th Avenue North.

Section 25-405. MEADOW LANE - VINCENT AVENUE NORTH. Meadow Lane (lying within the City of Brooklyn Center) is hereby renamed, and shall hereafter be known as Vincent Avenue North.

Section 25-406. 62ND AVENUE NORTH - 61ST AVENUE NORTH. 62nd Avenue North (lying between Perry Avenue North and Regent Avenue North) is hereby renamed and shall hereafter be known as 61st Avenue North.

Section 25-407. WOODBINE AVENUE NORTH - WOODBINE LANE. Woodbine Avenue North (lying in Northbrook Manor Addition and Northbrook Manor 2nd Addition) is hereby renamed and shall hereafter be known as Woodbine Lane.

Section 25-408. MAY AVENUE - INDIANA AVENUE NORTH. May Avenue (lying between 69th Avenue North and 70th Avenue North) is hereby renamed and shall hereafter be known as Indiana Avenue North.

Section 25-409. 47TH AVENUE NORTH - LAKE SIDE AVENUE. 47th Avenue North (lying within the City of Brooklyn Center) is hereby renamed, and shall hereafter be known as Lake Side Avenue.

Section 25-410. MARY LANE - CAMDEN COURT. Mary Lane (lying within the City of Brooklyn Center) is hereby renamed, and shall hereafter be known as Camden Court.

Section 25-411. LAKE DRIVE - EAST TWIN LAKE BLVD. Lake Drive (lying within Twin Lake Woods Addition within the City of Brooklyn Center) is hereby renamed, and shall hereafter be known as East Twin Lake Boulevard.

Section 25-412. OSSEO ROAD - BROOKLYN BOULEVARD. To the extent that it is located within the City of Brooklyn Center, State Trunk Highway 152, also known as Osseo Road, is hereby renamed Brooklyn Boulevard effective October 17, 1970.

Section 25-413. SHEEHAN ROAD - SUMMIT DRIVE NORTH, LUSHINE DRIVE - JOHN MARTIN DRIVE. Sheehan Road lying within Twin Cities Interchange Park Addition is hereby renamed, and shall hereafter be known as Summit Drive North. Lushine Drive lying within Twin Cities Interchange Park Addition is hereby renamed, and shall hereafter be known as John Martin Drive.

Section 25-414. 62-1/2 AVENUE - BOULDER LANE. 62-1/2 Avenue North (lying within the City of Brooklyn Center) is hereby renamed, and shall hereafter be known as Boulder Lane.

Section 25-415. 65TH AVENUE NORTH (PART) - FREEWAY BOULEVARD. That portion of 65th Avenue North between Humboldt Avenue North and Shingle Creek Parkway is hereby renamed, and shall be known as Freeway Boulevard, effective January 2, 1976.

Section 25-416. 69-1/2 AVENUE NORTH (PART) - IRVING LANE. That portion of 69-1/2 Avenue North between Logan Avenue North and Irving Avenue North is hereby renamed, and shall be known as Irving Lane North, effective January 2, 1976.

Section 25-417. 69-1/2 AVENUE NORTH (PART) - EMERSON LANE. That portion of 69-1/2 Avenue North between Dupont Avenue North and Emerson Avenue North is hereby renamed, and shall be known as Emerson Lane North, effective January 2, 1976.

Section 25-418. T.H. 169, KNOWN AS LYNDALE AVENUE, (PART) - WEST RIVER ROAD. That portion of T.H. 169, known as Lyndale Avenue, from FI-94 to the North Corporate Limits (73rd Avenue North) is hereby renamed, and shall be known as West River Road effective January 2, 1977.

CONSTRUCTION OF PRIVATE DRIVEWAYS AND SIDEWALKS

Section 25-501. WHEN AUTHORIZED. Property owners are hereby authorized to construct driveways and sidewalks traversing the boulevard connecting onto the streets owned by the City of Brooklyn Center subject to the following conditions:

- a. Such construction work must be done at the expense of the property owner. No such construction shall be allowed without having an approved permit from the Director of Public Works.
- b. The granting of permission by the council for this purpose shall give the owner no right or claim against the City if and when the City shall regrade the streets and shall otherwise improve or maintain said streets so that if following any construction or maintenance work on the streets, the property owner is required to reconstruct the driveway or sidewalk as a consequence thereof, he shall not be entitled to any reimbursement by the City.

Section 25-601. PREAMBLE. Whereas, freeway interchanges are unable to safely and expeditiously carry the flow of traffic and many motorists are attempting to find alternate routes through residential streets resulting in motorists making U-turns in public streets, on the boulevards, and in private driveways, as well as creating traffic congestion in areas where streets and traffic patterns are not designed for the many vehicles using the roadways, the stopping and turning movements, and the unorthodox driving maneuvers which occur.

NOW, THEREFORE, the City Council of the City of Brooklyn Center finds that an emergency ordinance is necessary to preserve the public peace and safety as follows:

Section 25-602. PROTECTION OF PERSONS AND PROPERTY. The City Manager is hereby authorized to regulate or prohibit vehicular or pedestrian traffic upon any street, alley, boulevard, parking lot open to the public, or other public way or public property for such period of time as shall be necessary for the purposes stated herein. The prohibition or regulation of vehicular or pedestrian traffic shall be by written order of the City Manager, and shall be valid only after the placement of appropriate signs, signals, barricades, or, in the alternative, until appropriate traffic control personnel have been dispatched to the scene, or, in the alternative, until other appropriate warning devices or methods have been implemented. Such regulations or prohibitions shall be for the following purposes:

- a. to protect public or private property from damage by vehicular or pedestrian traffic;
- b. to move, expedite or control the flow of traffic;
- c. to secure persons and property from trespass, danger, invasion of privacy, or unauthorized intrusion;
- d. to protect persons, motorists, animals or property from dangerous conditions;
- e. to protect against, to protect persons from, or to terminate any breach of the peace, assault, unlawful assembly, riot, fighting and brawling, illegal use of alcohol, drugs, or controlled substances, nuisance, whether civil or criminal, trespass, whether civil or criminal, disorderly conduct, terroristic threats, excessive or unreasonable noise, littering, continuing violations of the traffic laws, and similar activities or events.

Section 25-603. VIOLATIONS UNLAWFUL. It shall be unlawful and punishable as provided herein for any person to violate or disobey any order of the City Manager as authorized herein, or any regulation, sign, signal, barricade, traffic control official, or other warning device, designed, placed or erected to implement the order of the City Manager.

Section 25-604. PENALTIES. Any person violating the provisions of this ordinance, upon conviction thereof, shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment not to exceed ninety (90) days, or both, together with the costs of prosecution.

Section 25-701. VACATIONS. Any person requesting vacation of any part of a public street, alley, or easement shall make application to the Director of Public Works or designee using such forms and providing such information as prescribed and shall pay a cash fee, such fee to be established by the Council from time to time. All such vacations shall be made by ordinance. No street or alley or part thereof may be vacated without the approval of at least four-fifths (4/5) of the members of the Council.

Section 25-801. SIGHT OBSTRUCTIONS PROHIBITED. Trees, shrubbery, and other plant materials shall not be planted or maintained in such a manner as to obscure or impede the visual sightlines required to ensure the safe and efficient circulation of vehicles and pedestrians on streets, intersections, alleys, trails, and sidewalks.

Section 25-802. CLEAR VIEW TRIANGLE DEFINED. On any property which is located at a street intersection, the Clear View Triangle is defined as that triangular area formed by connecting the following three points: the point of intersection of the adjacent curb lines extended, and a point on each adjacent curb line 55 feet from such point of intersection. If there are no curbs, the edge of the traveled portion of the street or road shall be used instead of the curb line. On any property which is located at an intersection of an alley with a street, the triangular area is formed by connecting points 20 feet from such point of intersection. Nothing may be allowed within the Clear View Triangle to materially impede vision between a height of two and one-half feet and 10 feet above the centerline grades of the intersecting streets. However, certain objects may remain in the Clear View Triangle if, based on engineering judgment and discretion, there are other circumstances that limit or minimize risk at the intersection.

Section 25-803. PLANTS EXTENDING OVER ROADS OR ALLEYS PROHIBITED. No person owning or controlling any plantings along public streets or roadways shall permit such plantings to extend over the traveled portion of such street or roadway unless the lowest overhanging portion of such plantings is trimmed to a minimum of 16 feet above the centerline grade. No plantings may extend over the traveled portion of public alleys unless the lowest overhanging portion of such plantings is trimmed to a minimum of 12 feet above the centerline grade.

Section 25-804. PLANTS BLOCKING VISIBILITY OF SIGNS PROHIBITED. No person owning or controlling any plantings along public streets or roadways shall permit such plantings to block the visibility of any regulatory, warning, or street identification signs, nor any traffic signals. The City shall have the authority to determine the minimal amount of required clear zones in such circumstances.

Section 25-805. PLANTS EXTENDING OVER SIDEWALKS OR TRAILS PROHIBITED. No person owning or controlling any plantings along public sidewalks or trails shall permit such plantings to extend over the traveled portion of such sidewalks or trails unless the lowest overhanging portion of such plantings is trimmed to a minimum of 12 feet above the centerline grade.

Section 25-810. ENFORCEMENT. Violation of Sections 25-801 through 25-805 is determined and declared to be a public safety hazard and a public nuisance. When any such condition is found to exist, the City Manager or the City Manager's designee shall give the owner or occupant a written order to either: (1) abate the nuisance at the expense of the owner or occupant within a period of not less than 10 days, the exact time to be specified in such order; or (2) demand a hearing by giving the City Manager written notice of demand for such a hearing within 5 days after receipt of the order to abate the nuisance. Upon receipt of such a demand, the City Manager shall schedule a hearing before the Council at the first council meeting occurring more than 10 days after the order was served on the owner or occupant, and shall notify the owner or occupant of the time and place of the hearing. Following the

hearing, the City Council may rescind or affirm or modify the City Manager's order to abate the nuisance.

Upon failure by the owner or occupant to abate the nuisance as ordered by the City Manager, or by the City Council following a hearing, the City Manager shall cause the nuisance to be abated and shall certify the cost thereof to the City Clerk. The City Clerk shall certify said costs to the County to be extended on the tax rolls of the County against the real estate from which the nuisance was abated all in accordance with Minnesota Statutes, Chapter 429 and Section 412.221.

PERMITS FOR BLOCK PARTY STREET CLOSURES

Section 25-901. BLOCKING STREETS UNLAWFUL. It shall be unlawful for any person to erect barricades, close, block, or restrict the flow of through traffic on any public street in the City for the purpose of conducting a block party without first securing a permit pursuant to Sections 25-902 through 25-908 from the Brooklyn Center chief of police, or the designee of the chief of police.

Section 25-902. APPLICATIONS FOR PERMITS. Applicants for a permit shall, no less than 14 days prior to the date of the proposed block party, provide the following information in a form determined by the chief of police:

- a. Date, place, time, and location of the block party and a description of how the applicants intend to close or restrict traffic to the street during the block party.
- b. Whether alcohol will be served at the block party.
- c. Whether live music or any amplification equipment will be present at the proposed block party.
- d. The names, telephone numbers, and addresses of the individuals who will be responsible for planning, conducting, and cleaning up after the block party.
- e. Signatures of residents of at least seventy-five percent (75%) of the addresses on the street to which traffic will be closed or restricted, such signatures indicating consent to the street closure or restriction.
- f. The name, telephone number, and address of the individual responsible for barricades required by Section 25-904.
- g. A description of provisions which will be made for sanitation which may include providing portable facilities or access to restrooms in houses.

Upon receipt of a properly completed application, the chief of police shall approve the application if, after any necessary consultation with other City departments, the chief determines that the closure or restriction will not unnecessarily interfere with public travel and will not constitute a threat to the public health, welfare, or safety. No more than two closures of any street, or part thereof, shall be permitted in any one calendar year.

Section 25-903. APPLICATION FEE. The City Council may require the payment of a permit application fee, the amount of which may be set by resolution of the Council.

Section 25-904. BARRICADES. Only barricades approved by the City may be used to block or restrict traffic to a street upon which a block party is being conducted. The barricades will be obtained from an approved source by the person designated on the permit application. The designated person shall be responsible for placing the barricades in the appropriate positions. The designated person shall be responsible for the barricades.

Section 25-905. SUPERVISION. Adequate adult supervision shall be present at all times during the block party.

Section 25-906. GARBAGE AND CLEAN-UP. The permit applicants shall provide adequate trash receptacles during the block party. The permit applicants shall pick up all trash and otherwise return the street on which the block party was held to the condition it was in prior to the block party, and shall do so no more than eight (8) hours after the time at which the permit expires.

Section 25-907. HOURS. No streets may be barricaded prior to 8:00 a.m. nor later than 11:30 p.m. on the date of the block party.

Section 25-908. GENERAL CODE PROVISIONS APPLICABLE. Except as expressly provided for in Sections 25-901 through 25-907, any permit issued pursuant to these Sections shall be subject to all other applicable provisions of this Code, including, without limitations, the provisions of Chapter 19 and the noise restrictions contained therein.

RIGHT-OF-WAY MANAGEMENT

Section 25-1000. FINDINGS AND PURPOSE. To provide for the health, safety and well-being of its citizens, and to ensure the structural integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population bears the financial burden for the upkeep of the rights-of-way, a primary cause for the early and excessive deterioration of its rights-of-way is frequent excavation.

Right-of-way obstruction is a source of frustration for merchants, business owners and the general population which must avoid these obstructions or change travel or shopping plans because of them and has a detrimental effect on commerce. Persons whose facilities are within the right-of-way are the primary cause of these frequent obstructions.

The City holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The City and other public entities have invested millions of dollars in public funds to build and maintain the rights-of-way. It also recognizes that some persons, by placing their facilities in the right-of-way and charging the citizens of the City for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property.

In response to the foregoing facts, the City has enacted this Right-of-Way Management Ordinance relating to right-of-way permits and administration. This Ordinance imposes reasonable regulations on the placement and maintenance of facilities currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this ordinance, persons disturbing and obstructing the rights-of-way will bear a fair share of the financial responsibility for their integrity. Finally, this Ordinance provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

Section 25-1001. DEFINITIONS. The following definitions apply to the Right-of-Way Management Ordinance of this Code. Unless used in a context which indicates otherwise, defined terms remain defined terms whether or not capitalized.

- a. "Applicant" means any person requesting permission to excavate or obstruct a right-of-way.
- b. "City" means the City of Brooklyn Center, Minnesota. For purposes of Section 25-1027, City includes its elected officials, officers, employees and agents.
- c. "Collocate" or "Collocation" means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the City or other governmental unit.

- d. “City Cost” means the actual cost incurred by the City for public rights-of-way management; including but not limited to costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; creating information and maintaining information on a geographical information system (GIS) mapping system; degradation costs; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during public right-of-way work; providing traffic control due to applicant's neglect or inadequate performance; determining the adequacy of right-of-way restoration; restoring work inadequately performed; and revoking right-of-way permits and performing all other tasks required by this Right-of-Way Management Ordinance, including other costs the City may incur in managing the provisions of this Right-of-Way Management Ordinance.
- e. “Construction Performance Bond” means any of the following forms of security provided at the permittee's option:
 - 1. Individual project bond;
 - 2. Cash deposit;
 - 3. Security of a form listed or approved under Minnesota Statutes, Section 15.73, Subdivision 3;
 - 4. Letter of credit, in a form acceptable to the Director;
 - 5. Self-insurance, in a form acceptable to the Director;
 - 6. A blanket bond for projects within the City, or
 - 7. Other forms for a construction bond, for a time specified and in a form acceptable to the Director.
- f. “Degradation” means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.
- g. “Degradation cost” means the cost to achieve a level of restoration as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules 7819.9900 to 7819.9950.
- h. “Delay Penalty” means the penalty imposed as a result of unreasonable delays in right-of-way construction.
- i. “Department” means the Department of Public Works of the City.
- j. “Department Inspector” means any person authorized by the Director to carry out inspections related to the provisions of this Right-of-Way Management Ordinance.
- k. “Director” means the City Manager, or her or his designee.

- l. "Emergency" means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.
- m. "Equipment" means any tangible asset used to install, repair, or maintain facilities in any right-of-way.
- n. "Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way, except horticultural practices of penetrating the boulevard area to a depth of less than 12 inches.
- o. "Excavation Permit" means the permit which must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit.
- p. "Excavation Permit Fee" means money paid to the City by an applicant to cover the costs as provided in Section 25-1010.
- q. "Facility" means any tangible asset in the right-of-way required to provide Utility Service, but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street edge or curb.
- r. "In" when used in conjunction with "right-of-way" means over, above, in, within, on or under a right-of-way.
- s. "Local Representative" means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Right-of-Way Management Ordinance.
- t. "Management Costs" means the actual costs the City incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the City including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the City, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes, Sections 237.162 or 237.163; or any ordinance

enacted under those sections, or the City fees and costs related to appeals taken pursuant to Section 1.30 of this chapter.

- u. “Obstruct” means to place any object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.
- v. “Obstruction Permit” means the permit which must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way by placing equipment described therein on the right-of-way for the duration specified therein.
- w. “Obstruction Permit Fee” means money paid to the City by a registrant to cover the costs as provided in Section 25-1010.
- x. “Permittee” means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Right-of-Way Management Ordinance.
- y. “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity which has or seeks to have equipment in any right-of-way.
- z. “Public Right-of-Way” or “Right-of-Way” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane or public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.
- aa. “Registrant” means any person who (1) has or seeks to have its equipment located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or any equipment in the right-of-way.
- bb. “Repair” means the temporary construction work necessary to make the right-of-way useable for travel.
- cc. “Restore or Restoration” means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition that existed before the commencement of the work.
- dd. “Restoration Cost” means an amount of money paid to the City by a permittee to cover the cost of restoration.

- ee. “Right-of-Way Management Ordinance” means Sections 25-1000 through 25-1032 of this Code.
- ff. “Right-of-Way Permit” means either the excavation permit or the obstruction permit, or both depending on the context, required by this Right-of-Way Management Ordinance.
- gg. “Right-of-Way User” means:
 - 1. A telecommunications right-of-way user as defined by Minnesota Statutes, Section 237.162, Subdivision 4; or
 - 2. A person owning or controlling a facility in the public right-of-way that is used or is intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.
- hh. “Service” or “Utility Service” includes but is not limited to (1) those services provided by a public utility as defined in Minnesota Statutes, Section 216B.02, Subdivisions 4 and 6; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; (3) the services provided by a corporation organized for the purposes set forth in Minnesota Statutes, Section 301B.01 300.03; (4) the services provided by a district heating or cooling system, and (5) cable communications systems as defined in Minnesota Statutes, Chapter 238.
- ii. “Small Wireless Facility” means a wireless facility that meets both of the following qualifications:
 - 1. each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and
 - 2. all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.
- jj. “Supplementary Application” means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that has already been issued.
- kk. “Telecommunications Right-of-Way User” means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a

cable communication system defined and regulated under Minnesota Statutes, Chapter 238, and telecommunication activities related to providing natural gas or electric energy services, whether provided by a public utility as defined in Minnesota Statutes, Section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes, Chapters 453 and 453A, or a cooperative electric association organized under Minnesota Statutes, Chapter 308A, are not telecommunications right-of-way users for purposes of this chapter except to the extent such entity is offering wireless service.

- ll. “Unusable Facilities” means facilities in the right-of-way which has remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the facilities.
- mm. “Utility Pole” means a pole that is used in whole or in part to facilitate telecommunications or electric service.
- nn. “Wireless Facility” means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, or a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.
- oo. “Wireless Service” means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service.
- pp. “Wireless Support Structure” means a new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the City.

Section 25-1002. ADMINISTRATION. The City Manager is the principal City official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The Manager may delegate any or all of the duties hereunder.

Section 25-1003. REGISTRATION AND RIGHT-OF-WAY OCCUPANCY.

Subdivision 1. Registration. Each person who occupies, uses, or seeks to occupy or use, the right-of-way or any facilities in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, facilities in any right-of-way must register with the Director. Registration will consist

of providing application information and paying a registration fee. A person who pays a franchise fee to the City in accordance with a franchise agreement shall be exempt from the payment of permit fees if so provided in the franchise. If the work is to be performed by an agent, contractor or subcontractor on behalf of a registrant, such application shall also be signed or pre-authorized by the registrant.

Subdivision 2. Registration Prior to Work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the Director.

Subdivision 3. Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb provided and such use is subject to the use of the right-of-way by the City or other Persons for installation and maintenance of facilities. Persons planting or maintaining boulevard plantings or gardens or installing or operating irrigation systems shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this Right-of-Way Management Ordinance. However, excavations deeper than 12 inches are subject to the permit requirements of Section 25-1006. Registration shall not be required for:

- a. Private driveways or walkways
- b. Sewer and water connections serving individual properties
- c. Equipment of private landowner which is within the right-of-way and between that owner's property and the street curb
- d. Signs
- e. Mailboxes
- f. Street furnishings
- g. Bus stop benches
- h. Bus stop shelter
- i. Use by private landowners of utility easement areas for facilities that are not inconsistent with the rights of parties entitled to use the easement

Any Service or Utility Service provided by a person under a franchise with the City shall register pursuant to this section, but need not provide the registration information required by Section 25-1004 if such information has been received by the City in the administration of the franchise agreement. In addition, Persons acting as agents, contractors or subcontractors for a registrant which has properly registered or who is exempt from registration shall be exempt from registering under Section 25-1004.

Section 25-1004. REGISTRATION INFORMATION.

Subdivision 1. Information Required. The information provided to the Director at the time of registration shall include, but not be limited to:

- a. Each registrant's name, Gopher One-Call registration certificate number, address and e-

mail address if applicable, and telephone and facsimile numbers.

- b. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
- c. Such other information as the City may require including, but not limited to, proof of adequate public liability insurance.

Subdivision 2. Notice of Changes. The registrant shall keep all of the information listed above current at all times by providing to the Director information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

Section 25-1005. REPORTING OBLIGATIONS.

Subdivision 1. Operations. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan with the Director. Such plan shall be submitted using a format designated by the Director and shall contain the information determined by the Director to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. Reporting shall not be required for projects which are to be undertaken only in conjunction with City projects.

The plan shall include, but not be limited to, the following information:

- a. The locations and the estimated beginning and ending dates of all Projects to be commenced during the next calendar year (in this section, a "Next-year Project"); and
- b. The tentative locations and estimated beginning and ending dates for all Projects contemplated for the five years following the next calendar year (in this section, a "Five-Year Project").

The term "project" in this section shall include both Next-year Projects and Five-year Projects. By January 1 of each year the Director will have available for inspection in the Director's office a composite list of all Projects of which the Director has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

Thereafter, by February 1, each registrant may change any Project in its list of Next-year Projects, and must notify the Director and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a Next-year Project of another registrant listed by the other registrant.

Subdivision 2. Additional Next-year Projects. Notwithstanding the foregoing, the Director may,

for good cause shown, allow a registrant to submit additional Next-year Projects. Good cause includes, but is not limited to, the criteria set forth in Section 25-1015 concerning the discretionary issuance of permits.

Section 25-1006. PERMIT REQUIREMENT.

Subdivision 1. Permit Required. Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way, or install or place facilities in the right-of-way, without first having obtained the appropriate right-of-way permit from the Director to do so.

- a. Excavation permit. An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein, to the extent and for the duration specified therein.
- b. Obstruction permit. An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing facilities described therein on the right-of-way, to the extent and for the duration specified therein. An Obstruction Permit is not required if a Person already possesses a valid Excavation Permit for the same work period.
- c. Small wireless facility permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.
- d. Exceptions. A permit shall not be required for:
 1. Signs
 2. Mailboxes
 3. Street furnishings
 4. Bus stop benches
 5. Bus stop shelter
 6. Use by private landowners of utility easement areas for facilities that are not inconsistent with the rights of parties entitled to use the easement

Subdivision 2. Permit Extensions. No person may work in or obstruct the right-of-way beyond the date specified in the permit or do any work beyond that specified in the permit unless such person makes a supplementary application for an extension or modification of the work specified in the permit before expiration of the permit, pays a permit extension fee and is granted a permit extension by the Director. The Director may extend the completion of scope of the work if the specified work could not be done because of circumstances beyond the control of the permit holder.

Subdivision 3. Delay Penalty. Notwithstanding Subdivision 2 of this section, even if a new permit or permit extension is granted, the Director shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, repair, or restoration.

Subdivision 4. Permit Display. Permits issued under this Chapter shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by the Director

Subdivision 5. Antenna Support Structures. Except as otherwise provided, no permits will be issued for the erection of structures in the right-of-way for the sole purpose of supporting telecommunications antennas. Permits may be granted for the attachment of telecommunication antennas and ancillary wires and accessories to existing structures in the right-of-way, subject to the following conditions:

- a. The height of the antenna and related equipment may not extend more than six feet above the top of the previously existing support structure, and
- b. No antennas may be permitted that have associated or ancillary on-ground equipment in any residential district of the City, and
- c. The permission of the owner must be demonstrated, and
- d. Design and location of facilities are subject to review and approval of the Director.

Section 25-1007. PERMIT APPLICATIONS. Application for a permit is made to the Director. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- a. Registration with the Director pursuant to this Chapter;
- b. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the specific location and area of the proposed project and the detailed location of all existing and proposed equipment;
- c. Payment of all money due to the City for
 1. permit fees and costs, and any required deposit;
 2. prior obstructions or excavations;
 3. any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City;

4. franchise fees, if applicable.
- d. When an excavation permit is requested for purposes of installing additional facilities, and the posting of a construction performance bond for the additional facilities is insufficient, the posting of an additional or larger construction performance bond for the additional facilities may be required.

Section 25-1008. ISSUANCE OF PERMIT; CONDITIONS.

Subdivision 1. Permit Issuance. If the Director determines that the applicant has satisfied the requirements of this Chapter, the Director shall issue a permit.

Subdivision 2. Conditions. The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.

Subdivision 3. Small Wireless Facility Conditions. In addition to Subdivision 2, the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the all of the following conditions:

- a. A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.
- b. No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the City's written authorization, provided that the City may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.
- c. No wireless facility may extend more than 10 feet above its wireless support structure.
- d. Where an applicant proposes to install a new wireless support structure in the right-of-way, the City may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.
- e. Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the City may impose

reasonable requirements to accommodate the particular design, appearance, or intended purpose of such structure.

- f. Where an applicant proposes to replace a wireless support structure, the City may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

Subdivision 4. Small Wireless Facility Agreement. A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the City, or any other City asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the City. The standard collocation agreement may require payment of the following:

- a. Up to \$150 per year for rent to collocate on the City structure;
- b. \$25 per year for maintenance associated with the collocation;
- c. A monthly fee for electrical service as follows:
 1. \$73 per radio node less than or equal to 100 maximum watts;
 2. \$182 per radio node over 100 maximum watts; or
 3. The actual costs of electricity, if the actual cost exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the City and applicant.

Subdivision 5. Standards for Construction or Installation. The requirements and standards for facility construction or installation are contained in the General Requirements as specified by the Director. The Director may assign or prohibit specific locations for facilities within the right-of-way, or any particular segment thereof, and may limit the height of above-ground facilities. All excavation, obstruction, or other permits issued by the Director involving the installation or replacement of facilities shall designate the proper location for the facility at issue. The Director may deny a permit application, as provided in Section 25-1015, in the event the proposed location of such facilities is not consistent with the location required by the Director. The Director may revoke a permit, as provided in Section 25-1020, in the event the facilities are installed in a location that is inconsistent with the location designated in the applicable permit.

Any registrant whose facilities were previously located in the right-of-way in a position at variance with the locations established by the Director shall, no later than at the time of the next reconstruction or excavation of the area where its facilities are located, move that facility to its assigned position within the right-of-way, unless this requirement is waived by the Director for good cause

shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

Section 25-1009. ACTION ON SMALL WIRELESS FACILITY PERMIT APPLICATION.

Subdivision 1. Deadline for Action. The City shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the City fails to approve or deny the application within the review periods established in this Section.

Subdivision 2. Consolidated Applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:

- a. Are located within a two-mile radius;
- b. Consist of substantially similar equipment; and
- c. Are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the City may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

Subdivision 3. Tolling of Deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:

- a. The City receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the City may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.
- b. The applicant fails to submit all required documents or information and the City provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the City shall have ten days to notify the applicant in writing of any still-missing information.
- c. The City and a small wireless facility applicant agree in writing to toll the review period.

Section 25-1010. PERMIT FEES.

Subdivision 1. Excavation Permit Fee. The Excavation Permit Fee shall be established by the Director in an amount designed to recover the City Management Costs.

Subdivision 2. Obstruction Permit Fee. The Obstruction Permit Fee shall be established by the director and shall be in an amount designed to recover the City Management Cost.

Subdivision 3. Small Wireless Facility Permit Fee. The City shall impose a small wireless facility permit fee in an amount sufficient to recover:

- a. Management costs; and
- b. City engineering, make-ready, and construction costs associated with collocation of small wireless facilities.

Subdivision 4. Deposit. The Director may require that a permit application be accompanied by a deposit, in addition to the Permit Fee and Construction Performance Bond, in an amount established by the Director in order to offset any City costs that exceed the amount covered by the Permit Fee. Such additional City costs may include, but are not limited to, inspection costs for consultants or independent contractors, legal fees, and other out of pocket expenses, degradation costs, or restoration costs. The permit fee will cover City staff time spent in the administration of the permit process and in inspection activities.

The Director may require an applicant to submit a single deposit in an amount intended to cover all City costs which the Director determines may be incurred during the subsequent twelve (12) month period based on an applicant's construction and major maintenance plan filed in accordance with Section 25-1005. The Director shall approve all expenses charged against the deposit, and the unused portion thereof shall be returned to the applicant. The Director may periodically require that the deposit amount be replenished as expenses are charged against the deposit. The permit application shall further state that the applicant agrees to reimburse the City for any City costs incurred by the City in excess of the amount of the deposit.

Subdivision 5. Payment of Permit Fees. No excavation permit or obstruction permit shall be issued without payment of such fees before the issuance of such a permit.

Subdivision 6. Non refundable. Permit fees that were paid for a permit that the Director has revoked for a breach as stated in Section 25-1020 are not refundable.

Subdivision 7. Use of Permit Fees. All obstruction, excavation, and small wireless facility permit fees shall be used solely for City management, construction, maintenance and repair costs of the right-of-way.

Section 25-1011. RIGHT-OF-WAY REPAIR AND RESTORATION.

Subdivision 1. Timing. The work to be done under the excavation permit, and the repair and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done as determined by the Director because of extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 25-1003.

In addition to repairing its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for twelve (12) months following acceptance by the City.

Subdivision 2. Repair and Restoration. Permittee shall repair and restore its own work. The permittee shall at the time of application for an excavation permit post a construction performance bond in an amount determined by the Director to be sufficient to cover the cost of restoring the right-of-way to its pre-excavation condition. If, twelve (12) months after completion of the restoration of the right-of-way, the Director determines that the right-of-way has been properly restored, the surety on the construction performance bond shall be released. Permittees with whom the City has a current franchise agreement, or authorized agents, contractors, or subcontractors of that franchise shall not be required to post a construction performance bond.

Subdivision 3. Standards. The permitted shall perform repairs and restoration according to the standards and with the materials specified by the Director. The Director shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The Director in exercising this authority shall be guided by the following standards and considerations.

- a. The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;
- b. The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;
- c. The pre-excavation condition of the right-of-way; the remaining life expectancy of the right-of-way affected by the excavation;
- d. Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and
- e. The likelihood that the particular method of restoration would be effective in slowing the

depreciation of the right-of-way that would otherwise take place.

Subdivision 4. **Guarantees.** The permittee guarantees its work and shall maintain it for twelve (12) months following its completion. During this 12-month period it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the Director. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Director, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under Section 25-1014.

Subdivision 5. **Failure to Restore.** If the Permittee fails to restore the right-of-way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all restoration required by the Director, the Director at its option may do such work. In that event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its rights under the construction performance bond.

Section 25-1012. JOINT APPLICATIONS.

Subdivision 1. **Joint Application.** Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.

Subdivision 2. **With City Projects.** Registrants who join in a scheduled obstruction or excavation performed by the Director, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the obstruction portion of the permit fee for that part of the work which falls within the City project construction limits. The obstruction portion of the fee will be required for work which occurs outside of the City project construction limits and for work within such construction limits which is not completed by the City project completion date.

Subdivision 3. **Shared Fees.** Registrants who apply for permits for the same obstruction or excavation, which the Director does not perform, may share in the payment of the obstruction or excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Section 25-1013. SUPPLEMENTARY APPLICATIONS.

Subdivision 1. **Limitation on Area.** A right-of-way permit is valid only for the area of the right-of-way specified in the permit, which shall not exceed one (1) lineal mile of right-of-way. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension. The total area for which a permittee shall be permitted at any one time, pursuant to multiple permits or permit extensions, shall not exceed three (3) lineal miles of right-of-way.

Subdivision 2. Limitation on Dates. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date.

Section 25-1014. OTHER OBLIGATIONS.

Subdivision 1. Compliance With Other Laws. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other City, County, State, or Federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws, including Minnesota Statutes, Sections 216D.01 through 216D.09 ("One Call Excavation Notice System"). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

Subdivision 2. Prohibited Work. Except in an emergency, and with the approval of the Director, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Subdivision 3. Interference with Right-of-Way. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles may not be parked within or next to a permit area unless authorized by the Director. The loading or unloading of trucks next to a permit area is prohibited unless specifically authorized by the permit.

Section 25-1015. DENIAL OF PERMIT.

Subdivision 1. The Director may deny a permit for failure to meet the requirements and conditions of this Right-of-Way Management Ordinance, if the Director determines that denial is necessary to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way or when necessary to protect the right-of-way and its current use. The Director, in his/her discretion, may consider factors including:

- a. the extent to which right-of-way space where the permit is sought is available;
- b. the competing demands for the particular space in the right-of-way;
- c. the availability of other locations in the right-of-way or in other rights-of-way for the equipment of the permit application;

- d. the applicability of ordinance or other regulations of the right-of-way that affect location of equipment in the right-of-way;
- e. the degree of compliance of the applicant with the terms and conditions of its franchise, this Right-of-Way Management Ordinance, and other applicable ordinances and regulations;
- f. the degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
- g. the condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; and
- h. the balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way.
- i. If, in the discretion of the Director, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event.

Subdivision 2. Procedural Requirements. The denial or revocation of a permit must be made in writing and must document the basis for the denial. The City must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the City and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The City must approve or deny the resubmitted application within 30 days after submission.

Section 25-1016. INSTALLATION REQUIREMENTS. The excavation, backfilling, repair and restoration, and all other work performed in the right-of-way shall be done in conformance with the Brooklyn Center Standard Design Plates as promulgated by the Director and at a location as required by Section 25-1022.

Section 25-1017. INSPECTION.

Subdivision 1. Notice of Completion. The permittee shall notify the Director upon the completion of the work under any permit and at any stage of the work of the project specified in the permit or standard specifications of the City.

Subdivision 2. Site Inspection. Permittee shall make the work-site available to the Director and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

Subdivision 3. Authority of Director. At the time of inspection the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public. The Director may issue an order to the registrant for any work which does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 25-1020.

Section 25-1018. WORK DONE WITHOUT A PERMIT.

Subdivision 1. Emergency Situations. Each registrant shall immediately notify the Director of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Right-of-Way Management Ordinance for the actions it took in response to the emergency.

If the Director becomes aware of an emergency regarding a registrant's equipment, the Director may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the Director may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose equipment occasioned the emergency.

Subdivision 2. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay double the normal fee for said permit, deposit with the Director the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Right-of-Way Management Ordinance.

Section 25-1019. SUPPLEMENTARY NOTIFICATION. If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the Director of the accurate information as soon as this information is known.

Section 25-1020. REVOCATION OF PERMITS.

Subdivision 1. Substantial Breach. The City reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- a. The violation of any material provision of the right-of-way permit;

- b. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- c. Any material misrepresentation of fact in the application for a right-of-way permit;
- d. The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reason's beyond a Permittee's control; or
- e. The failure to correct in a timely manner a condition indicated on an order issued pursuant to Section 25-1017.

Subdivision 2. Written Notice of Breach. If the Director determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the Director shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. Further, a substantial breach, as stated above, will allow the Director, at his or her discretion, to place additional or revised conditions on the permit.

Subdivision 3. Response to Notice of Breach. Within twenty-four (24) hours of receiving notification of the breach, permittee shall contact the Director with a plan, acceptable to the Director, for its correction. Permittee's failure to so contact the Director, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

Subdivision 4. Reimbursement of City Costs. If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Section 25-1021. MAPPING DATA.

Subdivision 1. Information Required. Except as provided in Subdivision 2 of this section, each registrant shall provide to the Director information indicating the horizontal and vertical location, relative to the boundaries of the right-of-way, of all facilities which it owns or over which it has control and which is located in any right-of-way ("Mapping Data"). Mapping Data shall be provided with the specificity and in the format requested by the Director for inclusion in the mapping system used by the Director.

Within six (6) months after the acquisition, installation, or construction of additional facilities or any relocation, abandonment, or disuse of existing facilities, each registrant shall supplement the Mapping Data required herein.

Each registrant shall, within six (6) months after the date of passage of this Right-of-Way Management Ordinance, submit a plan to the Director specifying in detail the steps it will take to comply with the requirements of this Section. Said plan shall provide for the submission of all Mapping Data for the City as early as may be reasonable and practical, but not later than five (5) years after the date of passage of this Right-of-Way Management Ordinance.

Notwithstanding the foregoing, Mapping Data shall be submitted by all registrants for all facilities which is to be installed or constructed after the date of passage of this Right-of-Way Management Ordinance at the time any permits are sought under these ordinances.

After six (6) months after the passage of this Right-of-Way Management Ordinance, a new registrant, or a registrant which has not submitted a plan as required above, shall submit complete and accurate Mapping Data for all its facilities at the time any permits are sought under these ordinances.

Subdivision 2. Telecommunication Equipment. Information on existing facilities and facilities of telecommunications right-of-way users need only be supplied in the form maintained by the telecommunications right-of-way user.

Subdivision 3. Trade Secret Information. At the request of any registrant, any information requested by the Director, which qualifies as a "trade-secret" under Minnesota Statutes, Section 13.37(b) shall be treated as trade secret information as detailed therein. With respect to the provision of mapping data, the City may consider unique circumstances from time to time required to obtain mapping data.

Section 25-1022. LOCATION OF FACILITIES.

Subdivision 1. Undergrounding. Unless otherwise permitted by Minnesota Statutes, Section, 216B.36, new construction, the installation of new facilities and the replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes, except that the Director may approve above ground location and installation that the Director has determined cannot reasonably be placed underground due to expense, nature, or function if there are no unreasonable safety, maintenance, or aesthetic concerns or conflicts with the current use of right-of-way.

Subdivision 2. Corridors. The Director may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the Director expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the Director involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

The City may not require the relocation of existing underground facilities except in the event the City institutes a street improvement project, lawfully initiated and conducted by the City on its own behalf, which necessarily results in a substantial change of elevation and grade for a particular location. In such event, all affected utilities shall be relocated in a manner which minimizes the technical and

financial impact to each utility. The City may establish a high density corridor for telecommunications facilities in a manner consistent with the rules and regulations of the Minnesota Public Utilities Commission.

Subdivision 3. Limitation of Space. To protect health and safety, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right-of-way. In making such decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

Section 25-1023. RELOCATION OF EQUIPMENT. A Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities and facilities in the right-of-way whenever the director requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation.

The director may make such request to prevent interference by the Company's equipment or facilities with (i) a present or future City use of the right-of-way, (ii) a public improvement undertaken by the City, (iii) an economic development project in which the City has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

Section 25-1024. PRE-EXCAVATION EQUIPMENT LOCATION. In addition to complying with the requirements of Minnesota Statutes, Sections 216D.01 through 216D.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has facilities in the area to be excavated shall mark the horizontal and approximate vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

Section 25-1025. DAMAGE TO OTHER EQUIPMENT. When the Director does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the Director shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing.

Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way

which it or its facilities damages. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the City's response to an emergency occasioned by that registrant's facilities.

Section 25-1026. RIGHT-OF-WAY VACATION.

Subdivision 1. Reservation of Right. If the City vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant or permittee facilities, the City shall reserve, to and for itself and all registrants having facilities in the vacated right-of-way, the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

Subdivision 2. Relocation of Facilities. If the vacation requires the relocation of registrant or permittee facilities; and (a) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the City and the registrant or permittee; or (c) if the vacation proceedings are initiated by a person or persons other than the registrant or permittee, such other person or persons must pay the relocation costs.

Section 25-1027. INDEMNIFICATION AND LIABILITY.

Subdivision 1. Limitation Liability. By reason of the acceptance of a registration or the grant of a right-of-way permit, the City does not assume any liability (a) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the City, or (b) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by registrants or activities of registrants.

Subdivision 2. Indemnification. By registering with the Director, a registrant agrees, or by accepting a permit under this Chapter, a permittee is required, to defend, indemnify, and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its facilities, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a right-of-way permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City for any claim nor for any award arising out of the presence, installation, maintenance or operation of its facilities, or any activity undertaken in or near a right-of-way, whether or not the act or omission complained of is authorized, allowed or prohibited by a right-of-way permit. The foregoing does not indemnify the City for its own negligence except for claims arising out of or alleging the City's negligence where such negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said facilities by the registrant or on the registrant's behalf, including, but not limited to, the issuance of permits and inspection of plans or work. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the

registrant or to the City; and the registrant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. To the extent of any inconsistency between this Section 25-1027 and any franchise, the provisions of the franchise shall control.

Section 25-1028. ABANDONED AND UNUSABLE EQUIPMENT.

Subdivision 1. Discontinued Operations. A registrant who has determined to discontinue its operations in the City must either:

- a. Provide information satisfactory to the Director that the registrant's obligations for its facilities in the right-of-way under this Right-of-Way Management Ordinance have been lawfully assumed by another registrant; or
- b. Submit to the Director a proposal and instruments for transferring ownership of its facilities to the City. If a registrant proceeds under this clause, the City may, at its option:
 1. purchase the facilities; or
 2. require the registrant, at its own expense, to remove it; or
 3. require the registrant to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.

Subdivision 2. Abandoned Facilities. Facilities of a registrant who fails to comply with Subdivision 1, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (i) abating the nuisance (ii) taking possession of the facilities and restoring it to a useable condition, or (iii) requiring removal of the facilities by the registrant, or the registrant's successor in interest.

Subdivision 3. Removal. Any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, unless this requirement is waived by the Director.

Section 25-1029. RESERVATION OF REGULATORY AND POLICE POWERS. A Permittee's or registrant's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

Section 25-1030. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Right-of-Way Management Ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the

remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under any portions of this Right-of-Way Management Ordinance is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. If a permit, right or registration shall be considered a revocable permit as provided herein, the permittee must acknowledge the authority of the City Council to issue such revocable permit and the power to revoke it. Nothing in this Right-of-Way Management Ordinance precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

Section 25-1031. APPEALS. Decisions of the Director in the interpretation and enforcement of this Right-of-Way Management Ordinance may be appealed by the applicant, registrant or permittee to the City Council by serving written notice of a request for an appeal on the City Manager. The City Manager shall thereupon schedule a public hearing on the appeal before the City Council and give notice of the time, place and date of such hearing to the appealing party no less than ten (10) days prior to the hearing.

Section 25-1032. WAIVER. The Director may waive any or all requirements of Sections 25-1003 through 25-1010 and 25-1021 if compliance is not deemed to be reasonably necessary, in the discretion of the Director, to serve the purposes of this Right-of-Way Management Ordinance. The decision of the Director not to waive any such requirement is not subject to appeal to the City Council. Section 25-1022 may be waived as provided therein. Waiver of provisions of Sections 25-1003 through 25-1005 and 25-1021 may be rescinded by the Director at any time upon written notice to the person subject to the requirement.

Section 25-1100. MEDIAN SAFETY.

Section 25-1100. FINDINGS AND PURPOSE. The city has three high-capacity arterial roadways that are heavily travelled thruways with traffic counts on Brooklyn Boulevard of 17,300 to 30,500 vehicles per day, on Bass Lake Road of 11,400 to 16,100 vehicles per day, and on Trunk Highway 252 of 59,000 to 69,000 vehicles per day. Trunk Highway 252 is also considered an expressway that is one of the most heavily traveled highways with stoplights in Minnesota and has a high number of crashes, including one high-traffic intersection that is ranked the 2nd highest crash cost intersection in the state. These arterial roadways have posted speed limits that range from 35 m.p.h. to 55 m.p.h., contain high-traffic intersections, and have relatively narrow or obstructed medians. The medians on these roadways are traffic separation structures that were not designed, and are not maintained, to accommodate either any pedestrians, or only those who are temporarily crossing at a designated crosswalk. Most of the medians also contain landscaping, traffic control devices, and other obstructions that are inconsistent with use by pedestrians and those who attempt to walk around the obstructions are at an increased risk of being struck by a vehicle. The city has experienced an increase in

the number of pedestrians remaining on medians at high-traffic intersections for extended periods. It is not safe for pedestrians to remain on these medians as they are at risk of being struck by the large volume of traffic travelling through these intersections at high rates of speed. Their presence on the medians also distracts drivers focused on not striking them as they navigate through these high-traffic intersections. The purpose of these sections is to establish a narrowly tailored regulation intended to protect public safety related to pedestrians in roadways and drivers passing through high-traffic intersections on the identified arterial roadways within the city.

Section 25-1101. DEFINITIONS. For the purposes of Sections 25-1100 through 25-1104, the following terms shall have the meaning given them in this section.

- a. “Arterial roadway” means the following roadways within the city:
 1. Brooklyn Boulevard (CSAH 152);
 2. Bass Lake Road (CSAH 10), located between the western jurisdictional boundaries of the city and Trunk Highway 100; and
 3. Trunk Highway 252.
- b. “High-traffic intersection” means the following intersections on arterial roadways controlled by traffic signals:
 1. Brooklyn Boulevard and 69th Avenue;
 2. Brooklyn Boulevard and 68th Avenue;
 3. Brooklyn Boulevard and I-94 Westbound Ramps;
 4. Brooklyn Boulevard and I-94 Eastbound Ramps;
 5. Brooklyn Boulevard and 63rd Avenue;
 6. Brooklyn Boulevard and 65th Avenue;
 7. Brooklyn Boulevard and Bass Lake Road;
 8. Brooklyn Boulevard and 55th Avenue;
 9. Brooklyn Boulevard and TH 100 Southbound Ramps;
 10. Brooklyn Boulevard and TH 10 Northbound Ramps;
 11. Bass Lake Road and Xerxes Avenue;
 12. Bass Lake Road and Northway Drive (eastern most intersection)
 13. Bass Lake Road and Shingle Creek Parkway
 14. Bass Lake Road and TH 100 Southbound Ramps;
 15. Bass Lake Road and TH 100 Northbound Ramps;
 16. Trunk Highway 252 and 66th Avenue;
 17. Trunk Highway 252 and 70th Avenue; and
 18. Trunk Highway 252 and 73rd Avenue.
- c. “Median means a paved or unpaved area dividing a street or highway that separates lanes of traffic traveling in opposite directions, or, in the case of separated turn lanes, vehicles traveling

in the same direction.

- d. "Roadway" means the travelled portion and median of a street or highway.

Section 25-1102. PROHIBITION. No person shall be on a median within 300 feet of a high-traffic intersection unless the person is in the process of legally crossing the roadway. This prohibition applies to both the median on the arterial roadway and the median on the intersecting roadway. A person shall not be considered to be in the process of legally crossing a roadway, and it shall be *prima facie* evidence of a violation of this section, if a person stays on a median through two consecutive opportunities to cross the roadway in accordance with the crossing signal and state law.

Section 25-1103. EXCEPTIONS. The prohibitions in Section 25-1102 shall not apply to any of the following:

- a. Any person engaged in law enforcement or rescue activities, including providing assistance to an injured or disable vehicle or person;
- b. Any person engaged in the emergency repair of their vehicle; or
- c. Any public works staff or public contractors engaged in the maintenance, repair or improvement of a roadway or related public facilities, or public utility workers installing, maintaining, repairing, or removing public utilities.

Section 25-1104. PENALTY. A violation of Section 25-1102 is a petty misdemeanor offense and shall also constitute an administrative offense subject to issuance of an administrative citation and civil penalties as provided in Sections 18-201 through 18-212. A person who violates Section 25-1102 may be issued a petty misdemeanor citation or an administrative citation, but not both for the same violation. A person may be charged with a misdemeanor offense if that person violates Section 25-1102 within 12 months of the first of two prior median safety violations. For the purposes of this Section, "prior median safety violation" shall be defined as either: (a) a petty misdemeanor conviction of a violation of Section 25-1102; or (b) the payment of an administrative citation containing a violation of Section 25-1102. *(Ord. 2018-07, adopted 6/25/18)*